



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0202]

RIN 1625-AA87

Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone on the waters of the East River and Bronx Kill, in the vicinity of Randalls and Wards Islands, New York; revise the description of the Wall Street Heliport security zone on the East River, New York; and clarify the enforcement times and locations of the security zones that are located near the United Nations Headquarters in Manhattan, New York, as set forth in 33 CFR 165.164(a)(4) and (a)(5). This action is necessary to protect visiting dignitaries and the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. The zones are intended to restrict vessels from

a portion of the East River and Bronx Kill when public officials are scheduled to arrive and depart the area. Persons or vessels would not be allowed to enter these security zones without permission from the Captain of the Port New York (COTP) or the COTP's designated on-scene representative.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments"

portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division, U. S. Coast Guard; telephone (718) 354-4195, e-mail Jeff.M.Yunker@uscg.mil or Lieutenant Isaac Slavitt, Coast Guard First District Waterways Management Branch; telephone (617) 223-8385, e-mail Isaac.M.Slavitt@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0202) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11

inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0202) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice

regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

On five previous occasions, the Coast Guard established a similar temporary security zone to the one being proposed by this NPRM on the waters of the East River and Bronx Kill in the vicinity of Randalls Island. These five temporary security zones were effective on the following dates: March 29, 2011, November 30, 2011, January 19, 2012, March 1, 2012, and May 14, 2012. In four of those instances, the Coast Guard was unable to publish the temporary security zone in the Federal Register due to receiving late notifications regarding the arrival dates of the visiting dignitaries. For the March 1, 2012, temporary security zone, we published a temporary final rule in the Federal Register (77 FR 10960) entitled

"Security Zone, East River and Bronx Kill; Randalls and Wards Islands, NY."

On June 8, 2000, the Coast Guard proposed to establish two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York (65 FR 36393). We received no letters commenting on the proposed rule and no public hearing was requested and none was held. On August 2, 2000, we published a final rule (FR) in the Federal Register (65 FR 47318) establishing the two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York. These permanent security zones are set forth in 33 CFR 165.164(a)(4) and (a)(5).

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

On five occasions since March 2011, the United States Secret Service has requested that the Coast Guard establish a temporary security zone on the waters of the East River

and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands, New York.

The purpose of the proposed security zone is to facilitate the security and safety of the President and Vice President of the United States, and visiting heads of foreign states and other dignitaries during their visit to New York City.

The purpose of the revision to the Wall Street Heliport security zone is to identify the northern boundary of the security zone on the Manhattan shoreline at Wall Street. This is necessary due to the removal of Pier 13 that is currently referenced in 33 CFR 165.164(a)(1).

The purpose of the revisions to the United Nations security zone is to clarify enforcement times for the security zone, provide a more detailed description of the security zones, and provide a better understanding of the transit restrictions that would be enacted.

D. Discussion of Proposed Rule

The COTP New York proposes to establish a security zone on the waters of the East River and Bronx Kill in the vicinity of Randalls and Wards Islands, New York. The security zone is approximately 2,150 yards long and 860 yards wide. The security zone encompasses approximately

0.21 square nautical miles.

This proposed security zone would be activated 30 minutes before the dignitaries' arrival into the zone and would remain in effect until 15 minutes after the dignitaries' departure from the zone.

The proposed security zone on the East River in the vicinity of Randalls Island is necessary to facilitate the security and safety of the President of the United States and other dignitaries when they are in the vicinity of Randalls Island.

The proposed revision to the Wall Street Heliport security zone, paragraph (a)(1) of § 165.164, is necessary due to the removal of Pier 13 in Manhattan. This pier is currently used as a reference point to describe the northern boundary of the current security zone. This proposed revision would not change the size of the security zone. It would simply identify the position on the Manhattan shoreline of the current security zone boundary.

The proposed addition of paragraph (c)(2) of § 165.164 is necessary to clarify that the security zone in paragraph (a)(4), restricting access to the western half of the west channel at the United Nations, is in effect at all times.

The proposed addition of the United Nations West Channel Closure, proposed 33 CFR 165.164(a)(5), is

necessary to provide a more detailed description of the security zones that would be enacted during the annual United Nations General Assembly meetings. This would provide mariners a better understanding of the vessel transit restrictions that would be enacted and whether they would have the option of transiting the shallower waters of the eastern channel of the East River at Roosevelt Island during some portions of the United Nations General Assembly.

We are also proposing paragraph headings for each of the security zone locations in the regulation. This will provide an improved description of the location of each security zone allowing mariners to quickly determine if they would be impacted by the activation of that security zone.

We are proposing to move the activation times in paragraph (a) (6) of § 165.164 to proposed 33 CFR 165.164(c) (2), and amend the regulation to make the United Nations security zone effective at all times. We are also proposing to amend the means of notification in paragraph (a) (7) of § 165.164 and are proposing to insert a paragraph heading entitled "Notification of Enforcement" in proposed 33 CFR 165.164(d).

We are proposing a "Definitions" paragraph to help

reduce confusion in our use of the words "dignitary" and "designated representative."

We are proposing a "Contact Information" paragraph to provide more detailed instructions on requesting authorization for mariners to enter or operate within the security zones.

Additionally, we are proposing a paragraph entitled "Vessel Operator and Persons Authorized within a Security Zone" to explain how the U.S. Coast Guard expects these individuals to respond after they have requested permission to enter the activated security zones.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The

Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the limited time that vessels would be restricted from the Randalls and Wards Islands zone. The security zone would be activated for approximately 60 minutes approximately six times per year or when necessary. The Coast Guard expects minimal adverse impact to mariners from the zone's activation based on the limited duration of the enforcement period, the limited geographic area affected and because affected mariners may request authorization from the COTP or the designated on-scene representative to transit the zone.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River or Bronx Kill, in the vicinity of Randalls or Wards Islands, NY during the effective

period.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The security zone is of limited size and duration. Persons or vessels may request permission to transit the security zone from the COTP or the designated on-scene representative.

Additionally, before and during the effective period, the Coast Guard would issue maritime advisories widely available to users of the waterway, including marine information broadcasts, and distribute a written notice online at <http://homeport.uscg.mil/newyork>.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and

you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be

received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of one security zone and two revisions of another security

zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.164 to read as follows:

§165.164 Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) Location. The following areas are security zones:

(1) Wall Street heliport. All waters of the East River within the following boundaries: East of a line drawn between approximate position $40^{\circ}42'01''$ N, $074^{\circ}00'39''$ W (east of The Battery) to $40^{\circ}41'36''$ N, $074^{\circ}00'52''$ W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between $40^{\circ}42'14.8''$ N, $074^{\circ}00'20.3''$ W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) Randalls and Wards Islands: All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position $40^{\circ} 47' 27.12''$ N, $073^{\circ} 54' 35.14''$ W (Lawrence Point, Queens) to a point at approximate position $40^{\circ} 47' 52.55''$ N, $073^{\circ} 54' 35.25''$ W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6) (NAD 1983).

(3) Marine Air Terminal, La Guardia Airport: All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position $40^{\circ}46'47''$ N $073^{\circ}53'05''$ W to the Rikers Island Bridge at approximate position $40^{\circ}46'51''$ N $073^{\circ}53'21''$ W and east of a line drawn between the point at

the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46'36" N 073°53'31" W (NAD 1983).

(4) United Nations. All waters of the East River bound by the following points: 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), then east to 40°44'34.5" N, 073°58'10.5" W (about 175 yards offshore of Manhattan), then northeasterly to 40°45'29" N, 073°57'26.5" W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45'31" N, 073°57'30.5" W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44'37" N, 073°58'16.5" W (NAD 1983).

(5) United Nations West Channel Closure. All waters of the East River north of a line drawn from approximate position 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), to approximate position 40°44'31.04" N, 073°58'03.10" W (approximately 400 yards east of the Manhattan shoreline), all waters west of a line drawn from approximate position 40°44'31.04" N, 073°58'03.10" W (approximately 400 yards east of the Manhattan shoreline), to the southern tip of Roosevelt Island at approximate position 40°44'57.96" N, 073°57'41.57" W, then along the western shoreline of

Roosevelt Island to the Queensboro Bridge, and all waters south of the Queensboro Bridge (NAD 1983).

(6) United Nations Full River Closure. All waters of the East River north of a line drawn from approximate position 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), to approximate position 40°44'23" N, 073°57'44.5" W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) Definitions.

As used in this section--

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

Dignitary means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) Regulations.

(1) In accordance with the general regulations in 33 CFR part 165, no person or vessel may enter or move within a security zone created by this section while it is activated unless granted permission to do so by the COTP

New York or the designated representative.

(2) The security zone described in paragraph (a)(4) of this section is in effect at all times.

(d) Notification of Enforcement. Coast Guard Sector New York will provide actual notice to mariners for the purpose of enforcement. The COTP will also provide notice to the maritime public regarding the activation of these security zones by appropriate means, which may include but are not limited to a Local Notice to Mariners or marine information broadcasts, and at <http://homeport.uscg.mil/newyork>.

(e) Contact Information. Vessel operators desiring to enter or operate within the security zone shall telephone the COTP at 718-354-4356 or the designated representative via VHF channel 16 to request permission to do so.

(f) Vessel Operators and Persons Authorized within a Security Zone. Vessel operators and persons given permission to enter or operate in the security zone must comply with all directions given to them by the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard or New York City police vessel by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. Those vessels may be required to anchor or moor up to a waterfront facility.

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Dated: July 23, 2012

G. Loeb1
Captain, U.S. Coast Guard
Captain of the Port New York

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